

ADOLPH T. GRAY

IBLA 74-261

Decided November 1, 1974

Appeal from decision AA-3030 of Alaska State Office, Bureau of Land Management, rejecting in part an application to purchase a trade and manufacturing site.

Affirmed.

1. Alaska: Trade and Manufacturing Sites

Land is not occupied under 43 U.S.C. § 687(a) (1970) and 43 CFR 2562.3(d)(1) by use of the air space over it for the trajectory of bullets.

2. Alaska: Trade and Manufacturing Sites

Under 43 U.S.C. § 687(a) (1970) and 43 CFR 2562.3(d)(1), where there is no dispute as

to the facts, the pro tanto rejection of an application to purchase a trade and manufacturing site will be affirmed to the extent that the application includes a large peripheral safety zone in connection with a rifle range and an archery range, and fails to show substantial improvements on, or active use of the rejected area.

APPEARANCES: Adolph T. Gray, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Adolph T. Gray appeals from that portion of a decision of the Alaska State Office, Bureau of Land Management, dated March 21, 1974, which rejected 70 acres of land requested in his application to purchase a trade and manufacturing site filed pursuant to the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970). This acreage was rejected because there was no evidence that it was used or occupied for the purpose of trade, manufacture or other productive industry as required by the Act. The decision approved the application as to the other five acres requested.

The site consisting of approximately 75 acres of unsurveyed land is located on the north side of Jack Lake in sections 34 and 35, T. 9 N., R. 11 E., Copper River Meridian.

In his application to purchase filed on July 13, 1973, appellant listed improvements valued at \$ 3500: log cabin, attached frame building 28' x 20', frame privy 4' x 5', rifle range, archery range, boat dock. Appellant stated under item 8c:

Approximately 5 acres are covered by these improvements.

Appellant affirmed that the land is used and occupied for a wilderness camp for boys and girls.

In its decision, the State Office referred to a field examination of the site which showed that appellant had placed certain improvements upon a portion of the land covered by the claim, had used and occupied a portion of the land, and had conducted a business enterprise on the lands, as required by the trade and manufacturing site law and regulations issued thereunder. The decision cites section 10 of the Act which provides in part:

Any citizen * * * in the possession of and occupying public lands in Alaska * * * may * * * purchase one claim * * * upon submission of proof that said area embraces improvements of the claimant

and is needed in the prosecution of such trade, manufacture, or other productive industry * * *. (Emphasis added.)

The decision also quoted from Departmental regulation 43 CFR 2562.3(d)(1). In part, the said regulation requires that the application to purchase show:

* * * [T]he land is actually used and occupied for the purpose of trade, manufacture or other productive industry * * * and that it embraces the applicant's improvements and is needed in the prosecution of the enterprise. * * * (Emphasis added.)

The State Office held that the applicant can obtain title to only so much of the land in his claim as is actually occupied by the improvements and used in his business, citing Golden Valley Electric Association, 8 IBLA 386 (1972).

The State Office concluded that appellant did construct improvements on a five-acre portion of his claim and is conducting a business venture sufficient to warrant patent of that portion. As for the remaining 70 acres, the State Office found no evidence of past or current use or occupancy for the purpose of trade, manufacture or other productive industry and therefore rejected the application for that acreage.

Appellant asserts that this decision is erroneous for the following reasons:

(a) since the 5 acres approved will not adequately provide for the announced riflery and archery program outlined in the camp brochure (enclosed)

(b) and a rifle range is indicated on the drawing submitted with other proofs with the application to purchase

(c) and a rifle range has been in use and a shooting table-rest constructed and installed for the purpose east of the approved east boundary

(d) and that regulation CFR 2562.3(d)(1) states in part

* * * and that it embraces the applicant's improvements and is needed in the prosecution of the enterprise * * *.

[1, 2] The question on appeal is whether the 70 acres rejected in the State Office decision are used and occupied for the purpose of trade, manufacture or other productive industry. The State Office field report stated that "[t]he improvements were found to cover an area not exceeding five acres in extent," as was admitted by appellant in his application. The sketch attached to the application only roughly indicated a rifle range and an archery range, and did not show the size of either. It has been held that a particular 10 acre portion of a trade or manufacturing site need not contain substantial improvements provided the land is actively used in the conduct of the business. Lloyd Schade, 12 IBLA 316 (1973). Appellant herein seeks a

nonactive use of a 70-acre unimproved peripheral area, apparently in order to provide large safety zones in connection with rifle and archery

ranges. 1/ It has been properly held that under the Act land is not occupied by use of the air space over it for the trajectory of bullets. Elmer H. Houger, Fairbanks 014507 (June 24, 1964). We hold that appellant has not alleged the facts to show substantial improvements on, an active use of, or occupancy of more than the 5 acres granted.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

1/ See Schade, supra, at 319.

